

### Judge Najam, cont.

posium on the Role of State Intermediate Appellate Courts,” attended by judges from 22 states, the first such national conference.

He has served as a member of the Indiana Supreme Court Committee on Rules of Practice and Procedure (1995 to 2005) and the Indiana Supreme Court Judicial Technology and Automation Committee (1999 to 2005), and he represents the judiciary on the Indiana Department of Homeland Security Counter-Terrorism and Security Council.

Judge Najam is a member of the American, Indiana, and Monroe County Bar Associations, a graduate of the Indiana Graduate Program for Judges, a Fellow of the American, Indiana and Indianapolis Bar Foundations, a member of the Indiana University Maurer School of Law Board of Visitors, a member of Phi Delta Phi legal fraternity, and an Eagle Scout.

Judge Najam and his wife live in Bloomington.

### Judge Baker, cont.

In 2011 he joined the Board of Trustees of Garrett-Evangelical Theological Seminary in Evanston, IL, where he serves on the board’s Academic Affairs committee.

Judge Baker was retained by election in 1992, 2002 and 2012. He and his wife have five children and – so far – nine grandchildren.

### Judge Bailey, cont.

Indianapolis Bar Association’s Bar Leader Series; in 2009, he was designated an ASTAR Science and Technology Fellow and is a past Board Member of the Indiana Judges Association.

Judge Bailey is a member of the Supreme Court Committee on Rules of Practice and Procedure and a past Chair of the Indiana State Bar Association’s Appellate Practice Section. Also, he is in his second term as a Board Member of the Indiana University McKinney School of Law Alumni Association. Additionally, Judge Bailey serves as an adjunct professor at the University of Indianapolis.

Judge Bailey was retained on the Court of Appeals in 2000 and 2010.

His wife is a professor; the couple has two post college-age children.

## Indiana’s First State Capitol, 1816-1825

Indiana doesn’t have a lot of 200-year-old buildings, but Hoosiers are fortunate that the first state capitol is one of them.

The simple limestone structure, completed in 1816, is the heart of the Corydon Historic District in Harrison County, as listed on the National Register of Historic Places. Corydon served as the seat of Harrison County government, as territorial capital of the Indiana Territory, and as Indiana’s first state capital, from 1816-1825.

Those successive roles followed European settlement of the Northwest Territory, from which the Indiana Territory was carved in 1800.

The capitol building was under construction as the territory prepared for statehood. Among other things, that process involved a formal petition to Congress, adoption of a state constitution, and a minimum population of

60,000.

Territorial delegates crafted Indiana’s first Constitution on the site in June 1816, and the first General Assembly convened in the Federal-style building in November 1816. Congress approved Indiana’s status as the 19<sup>th</sup> state on Dec. 11, 1816.

Corydon wasn’t new to capital status, having succeeded Vincennes as the territorial capital in 1813. Nor was its status long to last, as the capital was relocated to Indianapolis in 1825, reflecting the population’s expansion into lands taken by treaty and war from Native Americans.

But the capitol building remains as a historic site and museum, and Corydon remains the county seat of Harrison County.



## SYNOPSIS

On May 5, 2011, Vorice Williams-Bey (“Williams”) was placed under arrest and was being checked for injuries at an Elkhart hospital. While being escorted to a police squad car, Williams fled on foot from police and re-entered the hospital.

A police detective, Crystal Garcia (“Detective Garcia”), located Williams in a hospital stairwell and attempted to apprehend him by grabbing Williams’s jacket. Detective Garcia managed to grab hold of the jacket, and her hand was injured in the process. Williams, however, got away from Detective Garcia and was eventually caught by other officers.

Williams was charged with Escape and a number of other offenses. After charges were filed, Williams was represented by an attorney from the public defender’s office. Williams became unsatisfied with the attorney’s representation, however, and on Oct. 29, 2012 he submitted a handwritten “Notice of Entry of Appearance,” requesting permission to represent himself at trial. This notice was sent by the court to both the prosecutor and Williams’s defense attorney, but no hearing was held on Williams’s request.

On Jan. 28, 2013, Williams, still represented by a public defender, pled guilty to Escape, as a Class B felony. If Williams had gone to trial, the State would have had to prove beyond a reasonable doubt that Williams had inflicted an injury on Detective Garcia.

At the guilty plea hearing, Williams admitted fleeing from police custody and admitted that Detective Garcia was injured when she grabbed his coat, but did not admit to inflicting Detective Garcia’s injury. However, Williams acknowledged that he understood himself to be pleading guilty, and the trial court accepted his guilty plea.

On Feb. 28, 2013, Williams was sentenced to a prison term of 10 years, and a number of charges against him were dismissed.

On Jan. 17, 2014, Williams filed a petition for post-conviction relief, requesting representation from the officer of the Indiana State Public De-

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## Court of Appeals of Indiana

*Hearing oral argument at  
Brown County High School  
Friday, February 26, 2016 @ 1 p.m.*



*Williams-Bey v. State*

**20A03-1508-PC-1173**

*On Appeal from Elkhart Superior Court  
The Honorable Evan S. Roberts, Judge*

**Indiana Bicentennial 1816-2016**



Synopsis, cont.

fender, which accepted Williams’s request. Represented by the State Public Defender, Williams sought to have his conviction for Escape vacated on three bases.

First, Williams argued that though he admitted to having fled from police custody, his statements concerning the cause of Detective Garcia’s injury was a protest of innocence, as a result of which the trial court should not have accepted his guilty plea.

Second, Williams contended that the trial court did not follow proper procedures when it failed to conduct a hearing on his request to represent himself at trial, a hearing required by U.S. Supreme Court precedent, and thus his conviction was invalid.

Third, Williams argued that the trial court’s failure to conduct a hearing and grant his request to represent himself deprived him of his constitutional right to effective assistance of counsel.

On April 24, 2015, the post-conviction court conducted a hearing on Williams’s petition, during which Williams and his public defender from the trial court testified. On July 24, 2015, the post-conviction court denied Williams’s petition for post-conviction relief.

This appeal followed.

After oral argument

After oral argument, a designated “writing judge” drafts an opinion for the panel’s consideration.

Opinions usually affirm or reverse lower court rulings in whole. But some affirm in part, reverse in part, or both. Often the opinion instructs the trial court about next appropriate steps.

Many opinions are unanimous, although 2-1 votes are not uncommon. Judges sometimes write separate concurring or dissenting opinions that emphasize different points of law or facts than the main opinion.

Parties can appeal Court of Appeals decisions to the Indiana Supreme Court by filing a petition to transfer. But transfer is not automatic; the Supreme Court can grant or deny transfer with or without giving a reason.

What is post-conviction relief?

Post-conviction relief is a civil procedure that allows people to challenge their criminal conviction, sentence or other deprivations of liberty even after they’ve exhausted the standard appeals process.

PCR is not a “second bite at the apple,” as the Indiana Supreme Court wrote in *Garrett v. State*, a 2013 case. “Post-conviction proceedings do not provide criminal defendants with a ‘super-appeal.’ Rather, they provide a narrow remedy to raise issues that were not known at the time of the original trial or were unavailable on direct appeal.”

“Post-conviction relief recognizes that the criminal justice system is a human system and that that system is fallible,” says Court of Appeals Judge Rudolph R. Pyle III. “It’s usually new evidence that wasn’t available at trial and ineffective assistance of counsel. Those are the two most common things alleged for PCR.”

Judge Pyle’s observations in no way reflect the merits of today’s case, which the assigned panel will decide. But his insights apply broadly to a procedural safeguard that’s not widely known outside of the legal profession.

PCR cases sometimes make the news when new evidence clears someone of long-ago crimes, often capital crimes. Consider these recent headlines from other states:

- “Judge: Texas man who served 12 years for rape should be exonerated.”
- “Man exonerated by DNA is freed after 24 years.”
- “Tulsa man ... had ineffective counsel, judge rules.”

Because it’s a civil proceeding, the burden of proof for those seeking post-conviction relief is a preponderance of the evidence, instead of the more stringent burden of beyond a reasonable doubt. But they are not entitled to an attorney, as they are at trial or direct appeal.

“The defendant is the one who has to meet the burden, not the state,” Pyle says.

A trial court considering a PCR petition is called a post-conviction court, and it may or may not conduct a hearing on the petition. According to the *Indiana Law Encyclopedia*, hearings are required when there are unresolved questions of fact, but not when the parties’ written materials, or pleadings, “conclusively show that the petitioner is not entitled to relief.”

All hearings are conducted without a jury, although a record of the proceedings is required.

Post-conviction relief can be procedurally complex. Consider *State v. Greene*, a Marion County case decided by the Indiana Supreme Court in September 2014.

Greene appealed a 2009 conviction to the Court of Appeals, which affirmed his conviction. After the Indiana Supreme Court declined to consider his case, Greene sought post-conviction relief from the trial court, claiming ineffective assistance of trial and appellate counsel.

The trial court conducted an evidentiary hearing, found in Greene’s favor and modified his conviction and sentence. The State appealed, the Court of Appeals affirmed the trial court, and the State appealed to the Supreme Court.

Indiana’s highest court then reversed the post-conviction court’s judgment and reinstated Greene’s 2009 conviction and sentence.

The process took five years and significant attorney and court resources, but it honored a core legal principle: “Each decision is subject to review, in most cases,” Pyle says.

PCR cases constitute a small percentage of Indiana trial and appellate caseloads. In 2013, the Court of Appeals decided 148 PCR appeals, out of 2,058 total opinions. The court affirmed the post-conviction court in 135 of those cases, or 91 percent.

Today’s Panel of Judges



The Honorable  
Edward W. Najam,  
Jr.  
  
Monroe County

**Edward W. Najam Jr.**, was nominated and appointed to the Court of Appeals of Indiana in 1992 and was retained by the electorate in 1996 and 2006. He is presiding judge of the court’s First District, which covers all of southern Indiana.

Judge Najam graduated from the Indiana University High School in Bloomington, where he was raised, and attended Indiana University Bloomington. While at IU, he was elected to Phi Beta Kappa, elected Student Body President, and earned a B.A. in political science in 1969, With Highest Distinction. He also received the Herman B Wells Senior Recognition Award for academic excellence and campus leadership.

Judge Najam earned his J.D. from the Harvard Law School in 1972. After admission to the Bar, he was Administrative Assistant to the Mayor of Bloomington for two years and an attorney in private practice for 18 years.

He served as a member of the Civil Justice Reform Act Advisory Group and the Local Rules Advisory Committee of the United States District Court for the Southern District of Indiana.

He was a member of the Bloomington Rotary Club, the Greater Bloomington Chamber of Commerce, and President of the Monroe County YMCA Board of Directors. Judge Najam is a director of the Community Foundation of Bloomington and Monroe County.

As Chair of the Appellate Practice Section of the Indiana State Bar Association, he initiated the Appellate Rules Project, which culminated in a complete revision of the Indiana Rules of Appellate Procedure in 2000, the first comprehensive review of the appellate rules in 30 years.

In 2001, he organized and co-chaired “Caught in the Middle: A National Sym-

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The Honorable  
John G. Baker  
  
Monroe County

**John G. Baker** was named to the Court of Appeals in 1989, which makes him the longest-serving member on the current Court. He has served as Presiding Judge of the Court’s First District, which covers all of southern Indiana, and as Chief Judge of the Court from 2007-2010.

Judge Baker grew up along the Ohio River in Aurora, IN, but attended high school at Culver Military Academy in northern Indiana. He studied history at Indiana University-Bloomington, and later received his law degree from Indiana University School of Law-Bloomington.

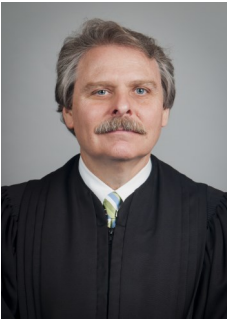
He practiced law in Monroe County for many years before joining the Monroe County bench as first a county and later a Superior Court Judge. Diligently, he handled more than 15,000 cases in 13 ½ years on Monroe County benches, and has written more than 4,000 majority opinions for the Court of Appeals.

Judge Baker is greatly interested in the history, structure and organization of Indiana’s judicial branch of government. He regards Indiana judges not as remote figures who conduct abstract arguments, but as people fully engaged in the life of the law and their communities.

He has taught in college and law school and is active in local, state and national bar associations. In 2013, Judge Baker retired after 33 years of teaching at the School of Public and Environmental Affairs, Indiana University-Bloomington. He continues to teach during the Spring semester at the McKinney School of Law.

Judge Baker’s many community activities include his church, the YMCA and the Boy Scouts (where he attained Eagle Scout status as a youth).

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The Honorable  
L. Mark Bailey  
  
Decatur County

**Lloyd Mark Bailey** was raised on the family farm in Decatur County. He was educated in Indiana, earning a B.A. from the University of Indianapolis (1978); a J.D. from Indiana University McKinney School of Law (1982); and an M.B.A. from Indiana Wesleyan University (1999). He also completed the graduate program for Indiana Judges. Judge Bailey was appointed to the Indiana Court of Appeals by Governor Frank O’Bannon in 1998, after having served as judge of the Decatur County and Decatur Superior Courts.

During his legal career, Judge Bailey has served public interest and professional organizations in various capacities. He was the first Chairperson of the Indiana Pro Bono Commission, having been awarded the Indiana Bar Foundation’s Pro Bono Publico Award and the 2002 Randall Shepard Award for his pro bono contributions.

His writings include: “A New Generation for Pro Bono,” “Pro Bono Participation Preserves Justice,” and “An Invitation to Become Part of the Solution,” all published in the *Indiana Lawyer*.

Judge Bailey also chaired the Local Coordinating Council of the Governor’s Task Force for a Drug-Free Indiana and the Judicial Conference Alternative Dispute Resolution Committee. Additionally, he has served on the Judicial Education Committee of the Judicial Conference of Indiana.

In 2004, Judge Bailey and his First District colleagues received the Indiana Bar Foundation Law-Related Education Award for their commitment to bringing oral arguments into community settings.

In February of 2006, he served as the Distinguished Jurist in Residence at Stetson University College of Law; in 2007-08, he was the Moderator of the

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